

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

JOSE RAMIREZ,

Petitioner,

v.

STEVEN J. O'BRIEN,

Respondent.

Civil Action No. 03-40281-NMG

**RESPONDENT'S MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS**

In accordance with Rule 11 of the Rules Governing Section 2254 Cases and Rule 12(b)(6) of the Federal Rules of Civil Procedure, the respondent, by and through his counsel, the Attorney General of the Commonwealth of Massachusetts, hereby respectfully moves to dismiss the petition for a writ of habeas corpus filed by the petitioner, Jose Ramirez. As grounds therefor, the respondent states that Ramirez failed to properly exhaust his state-court remedies before seeking habeas relief. Specifically, Ramirez never presented the federal nature of one of the two grounds in his petition to the Supreme Judicial Court of Massachusetts. The present petition therefore should be dismissed. Rose v. Lundy, 455 U.S. 509, 522 (1982); 28 U.S.C. § 2254(b)(1). The respondent relies on the accompanying memorandum of law in support of his motion to dismiss.¹

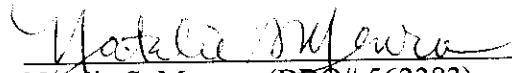
¹ In the event that this motion is not allowed, the respondent respectfully requests thirty (30) days from receipt of Petitioner's Memorandum of Law in support of his petition on the merits to file a memorandum in opposition to the petition.

WHEREFORE, the present motion should be allowed and an order should enter dismissing Ramirez's petition.

Respectfully submitted,

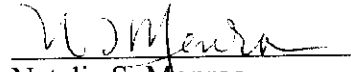
THOMAS F. REILLY
ATTORNEY GENERAL

Dated: March 15, 2004


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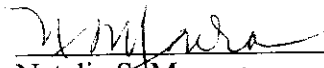
Certificate of Compliance with Local Rule 7.1(A)(2)

I, Natalie S. Monroe, hereby certify that I conferred with the petitioner's counsel on March 15, 2004. The parties were unable to resolve or narrow the issues in this motion.


Natalie S. Monroe

Certificate of Service

I hereby certify that on March 15, 2004, I caused a copy of the above document to be served by first-class mail, postage prepaid, upon counsel for the petitioner, Alan D. Campbell, Esq., P.O. Box 131, Brookline, Massachusetts 02446.


Natalie S. Monroe